IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 5TH FEBRUARY 2007 / 16TH MAGHA 1928

WP(C).No. 33478 of 2006(I)

PETITIONERS:

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1. GAFOOR, S/O.MOHAMMED,
   AGED 44 YEARS, RESIDING AT GHELASET PARAMBU,
   H.NO.C.C.NO.5/514, MATTANCHEERRY VILLAGE,
   ERNAKULAM DISTRICT.

2. SHAHIDA, W/O.GAFOOR,
   AGED 37 YEARS, RESIDING AT GHELASET PARAMBU,
   H.NO.C.C.NO.5/514, MATTANCHERRY VILLAGE,
   ERNAKULAM DISTRICT.

BY ADV. SRI.V.B.NARAYANAN

RESPONDENTS:

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1. UNION OF INDIA,
   REP. BY SECRETARY TO THE MINISTRY OF FINANCE,
   GOVERNMENT OF INDIA, NEW DELHI.

2. THE COMPETENT AUTHORITY,
   SMUGGLERS AND FOREIGN EXCHANGE,
   MANIPULATORS (FORFEITURE OF PROPERTY),
   MADRAS.

3. STASTE OF KERALA,
   REP. BY SECRETARY, MINISTRY OF FINANCE,
   GOVERNMENT OF KERALA,
   THIRUVANANTHAPURAM.

4. DISTRICT COLLECTOR,
   ERNAKULAM DISTRICT.

5. TAHSILDAR,
KOCHI TALUK.

6. VILLAGE OFFICER,
MATTANCHERRY.

7. SHERIFA ABDU, W/O.LATE ABDU,
RAYAM VEEDU, MATTANCHERRY P.O.

8. R.A.SUHRA, D/O.LATE ABDU,
RAYAM VEEDU, MATTANCHERRY P.O.

9. R.A.SAKKARIYA, S/O.LATE ABDU,
RAYAM VEEDU, MATTANCHERRY P.O.

10. R.A.NAZEER, S/O.LATE ABDU,
RAYAM VEEDU, MATTANCHERRY P.O.

11. R.A.MOHAMMED, S/O.LATE ABDU,
RAYAM VEEDU, MATTANVCHERRY P.O.

12. R.A.RAZHIYA, D/O.LATE ABDU,
RAYAM VEEDU, MATTANCHERRY P.O.

13. R.A.SUBAIDA, D/O.LATE ABDU,
RAYAM VEEDU, MATTANCHEERY P.O.

14. R.A.ZEENATH, D/O.LATE ABDU,
RAYAM VEEDU, MATTANCHERRY P.O.

R1 & R2 BY SRI.JOHN VARGHESE, ASG.
R3 TO R6 BY GOVT.PLEADER SRI.I.V.PRAMOD.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/02/2007,

THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).No. 33478 OF 2006-I

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Dated this the 5th day of February, 2007.

JUDGMENT

One K.S.Abdul Khader, Kappam Veedu, Mattancherry was a person who was held by the competent authority to have illegally acquired property as defined in the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976, hereinafter referred to as the "Act". In 1979, an order of forfeiture of property was passed against him, whereby the property in relation to which this writ petition is filed was forfeited and there is a declaration in terms of sub-section 3 of Section 7 that such property shall, subject to the provisions of the said Act, stand forfeited to the Central Government free from all encumbrances.

2. The said K.S.Abdul Khader purportedly sold that property to one Abdu, Rayan Veedu, Mattancherry, whose heirs, in turn, purportedly sold the said property to the petitioners.

3. It appears that there were different proceedings by the different parties leading ultimately to S.A.893/2001 being filed by the aforesaid Abdu which was closed as abated on account of non-impleadment of the legal representatives of Abdu.

4. The learned counsel for the petitioners urged before me that in the absence of any transaction or forfeiture being reflected in the encumbrance certificate issued in relation to the property and in view of the possession certificate issued by the Village Officer, the petitioners are bona fide purchasers and therefore, entitled to sustain their title and possession on the basis of the transfer in their favour, at least, by virtue of the exclusion of bona fide transfers as per Clause (A) occurring after Clause (iv) in Section 3(1)(c) of the Act. He further urged that the Act is, obviously, being misused since the pre-forfeiture notice proceedings in terms of Section 6 of that Act , rather than creating any embargo on any smuggler or foreign exchange manipulator from transferring his assets, puts him on notice of the intention of the Government to forfeit thereby putting such unlawful elements to notice of the purported action, resulting in such persons immediately transferring the

property which, as in the case in hand, ultimately puts bona fide purchasers to trouble.

5. The avowed objects sought to be achieved by the Act are laudable. The constitutional validity of the said statute is also beyond challenge. The Act does not provide for informing the registering authority under the Registration Act, regarding any forfeiture. However, the learned counsel for the petitioners submits that it contains such provisions as would empower the competent authority with all the powers of a civil court and therefore, any such action dealing with property ought to be brought to the notice of the registering authority. Otherwise, due notice as enjoined by law would not be available to bona fide transferees who would make due enquiries on the basis of the registration particulars by obtaining encumbrance certificate. Canvassing this position, the learned counsel urged that the situation in hand tends to impinge on Article 300-A of the Constitution which provides that no person shall be deprived of property otherwise than by due process of law. But, in the absence of statutory prescription regarding communication of forfeiture and because the Act does not make forfeiture conditional on such

communication, it cannot be held that the forfeiture is invalid. In the case in hand, the forfeiture was in the year 1979. Ext.P2 sale by Abdul Khader in favour of Abdu was in the year 1990 and the transaction in favour of the petitioners by the heirs of Abdu was in October, 2006. So much so, after the forfeiture of the property in 1979, all the other purported transactions are mere hollow documents which are of no legal consequence, affecting the right of the Central Government to the forfeited property in terms of Section 7 of the Act.

6. May be that, the petitioners would have grounds in law to sue for compensation, damages or for return of money from the purported transferors under the documents on the basis of which the petitioners claim, but that would not lie against the Central Government, having regard to the provisions of the Act.

7. The learned counsel for the petitioners raised yet another contention. According to him, the competent authority was empowered by the Act to notify Abdul Khader and dispossess him after giving him an opportunity to give possession. Following the order of forfeiture, recourse to such procedure not having been taken for more than a decade, it

ought to be assumed that there was no intention on the part of the Central Government to act on the forfeiture of property, at any rate, depriving any person who has come into possession of the property by virtue of transactions which are reflected by the registered documents and the revenue records. The learned Assistant Solicitor General points out that there were different proceedings either at the instance of Abdul Khader or late Abdu, including writ petitions and civil appeals and therefore, the Central Government cannot be found fault with for not having taken possession of the property following the forfeiture order. As already found by me, the forfeiture in terms of sub-section 3 of Section 7 of the Act is a complete action and there is a statutory forfeiture of the land to the Central Government, free from all encumbrances. This means that without any further action, including the actual dispossession of the occupant of the illegally acquired property, the land vests in the Central Government free from all encumbrances. Under such circumstances, this argument of the writ petitioners also fails.

8. In the result, the grounds raised in this writ petition are only to be repelled. I do so.

9. Following the forfeiture as above, the Central Government through the competent authority has to decide whether the property has to be sold out or not. If it is decided to sell out to third parties, any request of the petitioners for sale in their favour, at such value as may be determinable in terms of law, may be considered by the competent authority.

10. Having regard to the peculiar facts and circumstances, it is directed that the petitioners shall not be dispossessed for a period of one month from today.

Subject to the above, this writ petition is dismissed.

Sd/-

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-

-TRUE COPY-

P.S.TO JUDGE.